

**WEST VALLEY CITY  
STORM WATER DRAINAGE  
REIMBURSEMENT AGREEMENT**

**THIS REIMBURSEMENT AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between West Valley City, Utah Municipal Corporation (herein the “City”) and Dean L. & Bonnie B. Smith, individuals, (herein the “Developer”).

**W I T N E S S E T H :**

**WHEREAS**, the Developer is developing a project commonly known as D&G Scale (herein the “Project”), which is located at approximately 2602 South 3200 West, West Valley City, Utah; and

**WHEREAS**, the Developer is providing storm water drainage improvements to the City’s storm water drainage system in excess of those necessary to provide for adequate storm water drainage for the Project; and

**WHEREAS**, the cost of constructing said improvements to the storm water drainage system has exceeded the Developer’s storm water drainage obligations for the project as required by city ordinances and state law; and

**WHEREAS**, notwithstanding the fact that the cost of constructing the improvements has exceeded the Developer’s storm water drainage impact obligation, the Developer was willing to finance and construct the additional improvements in order to facilitate the development of the project; and

**WHEREAS**, Section 8-2-103 (4) and Section 18-5-208, West Valley City Code, provides that subject to certain terms and conditions, the City will reimburse the Developer for the cost of constructing improvements to the City’s storm water drainage system, which are contained in the Capital Facilities Plan for Drainage Impact Fees, to the extent that those costs exceed the cost the Developer is obligated to expend under city ordinances and state law for drainage improvements for the Project; and

**WHEREAS**, the parties desire to enter into an Agreement by which the City will reimburse the Developer for certain improvements to the storm water drainage system that are in excess of the Developer’s obligations.

**NOW THEREFORE**, for and in consideration of the mutual covenants made herein the parties hereby agree as follows:

**A G R E E M E N T :**

1. **Construction of Improvements.** The Developer hereby acknowledges that the construction of drainage improvements is necessary for the development of the project, is lawfully required by the City pursuant to the West Valley City Code and applicable state and federal law, and is a

lawful condition precedent to the approval and development of the project. The Developer further expressly acknowledges that the approval of the project by the City and the willingness of the City to execute this Agreement are both the result of the Developer's request that the City accommodate the Developer's desire to complete the project. The Developer acknowledges that the City had no obligation to construct the Excess Improvements and that the Developer chose, without coercion and of its own volition, to complete the Excess Improvements, knowing that they were necessary to provide adequate storm water drainage for the project.

2. **Storm Water Drainage System Improvements.** The improvements which are being constructed by the Developer are part of the City's storm water drainage system, but are in excess of the improvements necessary to accommodate the impact of the Developer's development are described in Exhibit A to this Agreement. The improvements described in Exhibit A are referred to as the "Excess Improvements." The reimbursement to the Developer set forth in this Agreement is contingent upon the inspection and acceptance of the Excess Improvements by the City.

3. **Reimbursement.** Pursuant to Section 8-2-103 and Section 18-5-208, West Valley City Code, the City may reimburse the Developer for the Excess Improvements. The parties hereby acknowledge and agree that the total reimbursement that may become payable to the Developer is \$116,462.00. This sum represents the estimated total cost of the Excess Improvements as described in Exhibit A to this Agreement. The parties agree that the total potential reimbursement shall be calculated based upon the quote provided by Commercial Design and Construction. The Developer shall be reimbursed the total reimbursable sum within 90 days of acceptance of the improvements by the City.

4. **No Accrual of Interest.** The parties expressly agree that the total potential reimbursement to the Developer, as set forth in this Agreement, has not to the date of this Agreement, and shall not in the future accrue interest.

5. **Notices.** All notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by mail service; by facsimile (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the Developer:	Dean L. & Bonnie B. Smith
Address:	5016 S. Jordan Canal Rd.
	Taylorsville, UT 84118
Phone:	(801)974-9920

If to the City:	West Valley City
	Attn: City Engineer
	3600 South Constitution Blvd.
	West Valley City, Utah 84119
	Telephone: (801) 963-3224
	Facsimile: (801) 963-3540

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

6. **Entire Agreement.** This Agreement contains the entire agreement between the parties and expressly supercedes any prior agreements between the City and the Developer regarding the subject matter contained herein. No statement, promise or inducements made by either party or agents for either party, which are not contained in this written Agreement, shall be binding or alid. This Agreement may not be enlarged, modified, or altered, except in writing signed by both parties.

7. **Assignment.** The Developer's right to receive reimbursement as set forth in this Agreement may be assigned to another person or entity by the written assignment of the Developer and upon the Developer's delivery of written notice and a copy of the written assignment to the City. The written notice of assignment and the copy of the executed assignment shall be delivered to the Public Works Director and to the City Attorney's Office.

8. **No Third Party Beneficiary.** This Agreement is not intended to create, nor shall it be deemed to create, any right in any person or entity who is not a party to this Agreement and shall be construed in any respect to be a contract in whole or in part for the benefit of any third party.

9. **Severability.** If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

10. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah.

11. **No Joint Venture.** This Agreement does not create, and shall not be construed to create, a joint venture by the parties and no separate government entity is established by this agreement.

12. **Term of Agreement.** This Agreement shall remain in force until such time as the Developer has received the reimbursement as set forth in paragraph 3 above or seven (7) years from the date that this Agreement is executed, whichever shall occur first. Also, the City may terminate this Agreement, at its sole discretion, if the Developer ceases operation or is no longer a legal entity, and Developer has not assigned its rights pursuant to paragraph 10 of this Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement the day and year first above written.

Dennis J. Nordfelt, Mayor

Sheri McKendrick, City Recorder

APPROVED AS TO FORM  
WVC Attorney's Office

By: \_\_\_\_\_

Date: \_\_\_\_\_

## DEVELOPER

Dean L. Smith

Bonnie B. Smith

State of \_\_\_\_\_ )  
 ) ss  
 County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, personally appeared before me Dean L. and Bonnie B. Smith, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person (s) whose name(s) is/are subscribed to this instrument, and acknowledge that he/she/they executed the same.

Notary Public